



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

IRB No. 2010-14
April 5, 2010

ACTION ON DECISION MEMORANDUM

SUBJECT: James R. Thompson v. United States
Court of Federal Claims No. 06-211 T

Issue:

Whether an interest in a limited liability company (LLC) is a limited partnership interest as defined under § 1.469-5T(e)(3).

Discussion:

On July 20, 2009, the Court of Federal Claims issued a summary judgment opinion in Thompson v. U.S., 87 Fed. Cl. 728 (Fed. Cl. 2009), concluding that LLC interests are not "limited partnership interests" for purposes of § 1.469-5T(e)(3)(i). Thompson joined Garnett v. Commissioner, 132 T.C. 19 (2009) and Gregg v. U.S., 186 F. Supp. 2d 1123 (D. Or. 2000) as the third case to rule against the position that an interest in an LLC is a limited partnership interest under § 1.469-5T(e)(3)(i).

The taxpayer in Thompson directly owned 99% of an LLC that was in the airplane charter business. The taxpayer indirectly owned the remaining 1% interest through a wholly-owned S corporation. The Service disallowed losses that the taxpayer claimed arguing that the taxpayer failed to meet the restricted material participation requirements that applied to limited partners under § 1.469-5T(e)(3)(i). Both parties stipulated that if the taxpayer's LLC interest was not characterized for purposes of § 469 as a limited partnership interest then the taxpayer could establish material participation using any of the seven tests in § 1.469-5T(a). The Court in Thompson held that the taxpayer's interest was not a limited partnership interest for purposes of § 469, and that even if the interest was treated as an interest in a limited partnership, the taxpayer's interest would best be categorized as a general partnership interest under § 1.469-5T(e)(3)(ii). Consequently, the Court held that the taxpayer could establish material participation using any of the seven tests in § 1.469-5T(a). See also, Garnett and Gregg, *supra*.

Recommendation: Acquiesce in result only.

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